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In re Application of :
BECHER, Reinhard, et al. :
U.S. Application No.: 09/744,594 :
PCT No.: PCT/DE99/02346 :
International Filing Date: 29 July 1999 :
Priority Date: 29 July 1998 :
Attorney's Docket No.: 449122001300 :
For: TRANSMISSION OF DIALOGUE :
INFORMATION FROM A :
TELECOMMUNICATIONS NETWORK TO A :
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DECISION ON
REQUEST FOR RE-MAILING
OF ACTION AND
REQUEST FOR REFUND

This decision is issued in response to the "Request For Re-Mailing" and "Request For Refund" filed on 10 August 2001. No petition fee is required.

BACKGROUND

On 29 July 1999, applicants filed international application PCT/DE99/02346 which claimed a priority date of 29 July 1998 and which designated the United States. On 10 February 2000, a copy of the international application was transmitted to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

A Demand was filed with the International Preliminary Examining Authority electing the United States prior to the expiration of 19 months from the priority date. As a result, the deadline for payment of the basic national fee was 30 months from the priority date, i.e., 29 January 2001.

On 26 January 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 12 February 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date were required. The Notification also informed applicants that the failure to submit these materials within one month of the date of the Notification would result in abandonment of the application.

On 23 July 2001, applicants filed the "Request For Re-Mailing Of Action" considered herein. This request asserts that applicants never received the Notification Of Missing Requirements mailed 12 February 2001.

On 10 August 2001, applicants filed a request for a four month extension of time, an executed declaration and surcharge payment, and a request for a refund of the extension of time payment (premised on the granting of the request for re-mailing).

DISCUSSION

A. Request For Re-Mailing:

The Request For Re-Mailing asserts that applicants never received the Notification Of Missing Requirements mailed 12 February 2001. Section 711.03(c)II of the MPEP sets forth the requirements for such a petition:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Here, the Request For Re-Mailing contains the required statement from the practitioner that the Notification Of Missing Requirements was not received. However, it does not contain the additional required statement that "a search of the file jacket and docket records indicates that the [Notification Of Missing Requirements] was not received." As for the docket records requirement, applicants have attached a copy of their incoming mail-log for February. However, logs of incoming mail are not acceptable in satisfaction of the docket records requirement. Rather, applicants must provide a copy of their office docket for the date on which a response to the Notification Of Missing Requirements would have been required had the Notification been received (i.e., 12 March 2001).

Applicants have failed to satisfy all the requirements for a grantable petition. Accordingly, at the present time it cannot be concluded that applicants failed to receive the Notification Of Missing Requirements mailed 12 February 2001.

B. Request For Refund

Applicants' 10 August 2001 submission included a proper response to the Notification Of Missing Requirements, that is, an executed declaration in compliance with 37 CFR 1.497 and the

\$130 surcharge for filing the declaration after the thirty month deadline. The submission also included a request for a four-month extension of time to respond the Notification Of Missing Requirements, a \$1,390 payment for this extension of time, and the authorization to charge Deposit Account No. 03-1952 for any additional fees that were required. Because the response to the Notification Of Missing Requirements was due on 12 March 2001, applicants actually required a five month extension of time to render the 10 August 2001 submission timely. Accordingly, pursuant to the authorization contained in the request for extension of time, applicants have been charged the additional \$500 required for a five month extension of time. Based on this extension, the submission is considered timely.

As for applicants' Request For Refund, such request is premised on the granting of applicant's Request for Re-Mailing. Because, as set forth above, the Request For Re-Mailing cannot be granted at this time, the Request For Refund must also be dismissed. Should applicants submit a grantable renewed petition showing that the Notification of Missing Requirements was not received, the decision on the Request For Refund would also be reconsidered.

CONCLUSION

Applicants' "Request For Re-Mailing" and "Request For Refund" are **DISMISSED** without prejudice.

Deposit Account No. 03-1952 has been charged \$500 to bring applicants' payment for the extension of time to respond to the Notification Of Missing Requirements to the required total of \$1,890 (for a five month extension, 12 March 2001 through 12 August 2001).

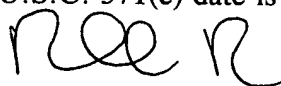
Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision, and must include the additional materials and statements discussed above that are necessary for a grantable petition to demonstrate the failure to receive an Office communication. Any further correspondence with respect to the dismissed requests should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing. The 35 U.S.C. 371(c) date is 10 August 2001.



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Attachment: Copy of Notification Of Missing Requirements (Form PCT/DO/EO/905)